

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARK ANTHONY CANDLER,
Plaintiff,

v.

SANTA RITA COUNTY JAIL WATCH
COMMANDER, et al.,
Defendants.

Case No. [11-cv-01992-CW](#) (PR)

ORDER SERVING COGNIZABLE CLAIM

Plaintiff, a state prisoner incarcerated at the California Men's Colony, filed this pro se civil rights action pursuant to 42 U.S.C. § 1983, complaining about his conditions of confinement during the period of his incarceration as a pretrial detainee at the Alameda County Jail in Santa Rita (SRCJ). On January 26, 2015, the Court granted Defendants' motion for summary judgment on all claims in the first amended complaint. However, because summary judgment on the procedural due process claim was granted on the ground that Plaintiff failed to name the proper defendants, the Court granted Plaintiff's motion for leave to file a second amended complaint (2AC) to allow him to name the proper defendants.

On March 4, 2015, the Court dismissed Plaintiff's 2AC with leave to amend. The Court noted that, although Plaintiff named individuals as Defendants, he did not allege how they violated his procedural due process rights.

On March 19, 2015, Plaintiff filed a third amended

1 complaint, (3AC), which the Court now reviews.

2 DISCUSSION

3 I. Standard of Review

4 A federal court must conduct a preliminary screening in any
5 case in which a prisoner seeks redress from a governmental entity
6 or officer or employee of a governmental entity. 28 U.S.C.
7 § 1915A(a). In its review, the court must identify any
8 cognizable claims and dismiss any claims that are frivolous,
9 malicious, fail to state a claim upon which relief may be granted
10 or seek monetary relief from a defendant who is immune from such
11 relief. Id. § 1915A(b)(1), (2). Pro se pleadings must be
12 liberally construed. Balistreri v. Pacifica Police Dep't, 901
13 F.2d 696, 699 (9th Cir. 1988).

14 To state a claim under 42 U.S.C. § 1983, a plaintiff must
15 allege two essential elements: (1) that a right secured by the
16 Constitution or laws of the United States was violated, and
17 (2) that the alleged violation was committed by a person acting
18 under the color of state law. West v. Atkins, 487 U.S. 42, 48
19 (1988).

20 Liability may be imposed on an individual defendant under 42
21 U.S.C. § 1983 if the plaintiff can show that the defendant's
22 actions both actually and proximately caused the deprivation of a
23 federally protected right. Lemire v. California Dept.
24 Corrections & Rehabilitation, 726 F.3d 1062, 1074 (9th Cir.
25 2013); Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988). A
26 person deprives another of a constitutional right within the
27 meaning of § 1983 if he does an affirmative act, participates in
28 another's affirmative act or omits to perform an act which he is

1 legally required to do, that causes the deprivation of which the
2 plaintiff complains. Leer, 844 F.2d at 633.

3 II. Plaintiff's Allegations

4 In his 3AC, Plaintiff names as Defendants SRCJ Watch
5 Commander Gordon Bowan and SRCJ Deputies Bervin Hankins,
6 Christopher Feeny, Rogelio Matedne, Mark Schlegal, Terry Carson,
7 Aaron Garth, Robert Bixby, Robert Griffith and Michael Molly.
8 Plaintiff alleges that all Defendants, except Bowan, were on the
9 SRCJ Classification Committee and were responsible for the
10 decision to place him in administrative segregation without due
11 process of law, in that he did not receive notice of the reason
12 Defendants determined to place him in administrative segregation,
13 he did not have a hearing on the matter and he did not have an
14 opportunity to present his views. As a result, for the entire
15 900 days Plaintiff was a pretrial detainee at SRCJ, he remained
16 in isolation and was denied access to inmate programs and group
17 religious services, he ate meals by himself in his cell, and had
18 little access to the outdoor yard.

19 Liberally construed, the 3AC appears to state a cognizable
20 procedural due process claim against Deputies Hankins, Feeny,
21 Matedne, Schlegal, Carson, Garth, Bixby, Griffith and Molly.
22 However, even liberally construed, the 3AC does not state a
23 cognizable claim against Watch Commander Bowan because the
24 allegations state he was not on the Classification Committee nor
25 do they indicate how he was responsible for the decision to place
26 Plaintiff in administrative segregation. Therefore, the claim
27 against Watch Commander Bowan is dismissed. Dismissal is with
28 prejudice because Plaintiff had two opportunities to state a

1 cognizable claim against Bowan and he has failed to do so.

2 CONCLUSION

3 For the foregoing reasons, the Court orders as follows:

4 1. The procedural due process claim against Watch Commander
5 Bowan is dismissed with prejudice.

6 2. Plaintiff states a cognizable claim for the violation of
7 his right to procedural due process against all Defendants, with
8 the exception of Bowan.

9 3. The Clerk of the Court shall mail a Notice of Lawsuit and
10 Request for Waiver of Service of Summons, two copies of the
11 Waiver of Service of Summons, a copy of the 3AC (docket no. 80)
12 and all attachments thereto, a copy of this Order, the Order
13 Granting Defendants' Motion for Summary Judgment, (docket no.
14 77), and a copy of the Order Dismissing Second Amended Complaint
15 (docket no. 79) to SRCJ Deputies Bervin Hankins, Christopher
16 Feeny, Rogelio Matedne, Mark Schlegal, Terry Carson, Aaron Garth,
17 Robert Bixby, Robert Griffith and Michael Molly. The Clerk shall
18 also mail a copy of the 3AC and a copy of this Order and the
19 other Orders mentioned above to the Office of the Alameda County
20 Counsel. Additionally, the Clerk shall mail a copy of this Order
21 to Plaintiff.

22 4. Defendants are cautioned that Rule 4 of the Federal
23 Rules of Civil Procedure requires them to cooperate in saving
24 unnecessary costs of service of the summons and complaint.
25 Pursuant to Rule 4, if Defendants, after being notified of this
26 action and asked by the Court, on behalf of Plaintiff, to waive
27 service of the summons, fail to do so, they will be required to
28 bear the cost of such service unless good cause be shown for the
failure to sign and return the waiver forms. If service is

1 waived, this action will proceed as if Defendants had been served
2 on the date that the waiver is filed, except that pursuant to
3 Rule 12(a)(1)(B), Defendants will not be required to serve and
4 file an answer before sixty days from the date on which the
5 request for waiver was sent. (This allows a longer time to
6 respond than would be required if formal service of summons is
7 necessary.)

8 Defendants are advised to read the statement set forth at
9 the foot of the waiver form that more completely describes the
10 duties of the parties with regard to waiver of service of the
11 summons. If service is waived after the date provided in the
12 Notice but before Defendants have been personally served, the
13 answer shall be due sixty days from the date on which the request
14 for waiver was sent or twenty days from the date the waiver form
15 is filed, whichever is later.

16 5. The following briefing schedule shall govern dispositive
17 motions in this action:

18 a. No later than thirty days from the date the answer
19 is due, Defendants shall file a motion for summary judgment or
20 other dispositive motion. If Defendants file a motion for
21 summary judgment, it shall be supported by adequate factual
22 documentation and shall conform in all respects to Federal Rule
23 of Civil Procedure 56. If Defendants are of the opinion that
24 this case cannot be resolved by summary judgment, they shall so
25 inform the Court prior to the date the summary judgment motion is
26 due. All papers filed with the Court shall be promptly served on
27 Plaintiff.

28 At the time of filing the motion for summary judgment or
other dispositive motion, Defendants shall comply with the Ninth

1 Circuit's decision in Woods v. Carey, 684 F.3d 934 (9th Cir.
2 2012), and provide Plaintiff with notice of what is required of
3 him to oppose a summary judgment motion. If the motion is based
4 on non-exhaustion of administrative remedies, Defendants must
5 comply with the notice and procedural requirements in Albino v.
6 Baca, 747 F.3d 1162 (9th Cir. 2014).

7 b. Plaintiff's opposition to the motion for summary
8 judgment or other dispositive motion shall be filed with the
9 Court and served on Defendants no later than twenty-eight days
10 after the date on which Defendants' motion is filed.

11 Before filing his opposition, Plaintiff is advised to read
12 the notice that will be provided to him by Defendants when the
13 motion is filed, and Rule 56 of the Federal Rules of Civil
14 Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
15 (party opposing summary judgment must come forward with evidence
16 showing triable issues of material fact on every essential
17 element of his claim). Plaintiff is cautioned that because he
18 bears the burden of proving his allegations in this case, he must
19 be prepared to produce evidence in support of those allegations
20 when he files his opposition to Defendants' summary judgment
21 motion. Such evidence may include sworn declarations from
22 himself and other witnesses to the incident, and copies of
23 documents authenticated by sworn declaration. Plaintiff will not
24 be able to avoid summary judgment simply by repeating the
25 allegations of his complaint.

26 c. Defendants shall file a reply brief no later than
27 fourteen days after the date Plaintiff's opposition is filed.
28

1 d. The motion shall be deemed submitted as of the date
2 the reply brief is due. No hearing will be held on the motion
3 unless the Court so orders at a later date.

4 6. Discovery may be taken in this action in accordance with
5 the Federal Rules of Civil Procedure. No further court order
6 pursuant to Rule 30(a)(2) is required before the parties may
7 conduct discovery.

8 7. All communications by Plaintiff with the Court must be
9 served on Defendants, or Defendants' counsel once counsel has
10 been designated, by mailing a true copy of the document to
11 Defendants or Defendants' counsel.

12 8. It is Plaintiff's responsibility to prosecute this case.
13 Plaintiff must keep the Court informed of any change of address
14 by filing a separate paper with the Clerk headed "Notice of
15 Change of Address," and must comply with the Court's orders in a
16 timely fashion. Failure to do so may result in the dismissal of
17 this action for failure to prosecute pursuant to Federal Rule of
18 Civil Procedure 41(b).

19 9. Extensions of time are not favored, though reasonable
20 extensions will be granted. Any motion for an extension of time
21 must be filed no later than fourteen days prior to the deadline
22 sought to be extended.

23 IT IS SO ORDERED.

24 Dated: 04/09/2015



25 CLAUDIA WILKEN
26 United States District Judge
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